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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Respondent, v. JOHN PIERRE BAKER, Petitioner.	2 CA-CR 2008-0012-PR DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-57359

Honorable Frank Dawley, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

John Pierre Baker — Tucson
In Propria Persona

H O W A R D, Presiding Judge.

¶1 Petitioner John Pierre Baker was convicted after a jury trial of conspiracy to commit child abuse, ten counts of child abuse, and two counts of kidnapping a minor under the age of fifteen. The trial court sentenced him to a combination of consecutive and

concurrent prison terms totaling 86.5 years. We affirmed Baker's convictions and sentences on appeal, *State v. Baker*, No. 2 CA-CR 99-0222 (memorandum decision filed Sept. 14, 2000), and denied relief on his consolidated petitions for review of the trial court's denial of post-conviction relief on his first and second petitions for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P., *State v. Baker*, Nos. 2 CA-CR 2005-0366-PR, 2 CA-CR 2006-0088-PR (consolidated) (memorandum decision filed Jan. 25, 2007), and on his third petition for post-conviction relief, *State v. Baker*, No. 2 CA-CR 2006-0428-PR (memorandum decision filed Feb. 28, 2007). Baker filed yet another petition for post-conviction relief in September 2007, which the trial court denied, and this petition for review followed. We will not disturb a trial court's denial of post-conviction relief absent an abuse of discretion. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). We find no abuse here.

¶2 Baker first argues that, pursuant to Rule 32.1(g) based on a significant change in the law, he is entitled to a reduction of his two, seventeen-year sentences for kidnapping a minor under the age of fifteen, a dangerous crime against children.[1] *See* A.R.S. § 13-604.01. Baker's attempt to avoid preclusion by arguing his claim is a significant change in the law fails for various reasons. His claim that the "change" to § 13-604.01 entitles him to

[1]Baker mentions that he believes his seventeen-year sentences should be concurrent but does not develop this suggestion in any meaningful way. Therefore, it is waived. *See State v. Carver*, 160 Ariz. 167, 175, 771 P.2d 1382, 1390 (1989) (defendant waives issue by failing to sufficiently argue it).

a sentence reduction, without more, is unduly vague. We presume Baker is relying on the language in A.R.S. § 13-604.01(I)—now renumbered as (J), *see* 2007 Ariz. Sess. Laws, ch. 248, § 2—which he attached to his petition below, to argue that he should have been included in the class of individuals eligible for earned release credits pursuant to A.R.S. § 41-1604.07. However, even if Baker's claim were cognizable under Rule 32, it would nonetheless fail because sentencing is expressly governed by the penalty statutes in effect at the time an offense is committed and is unaffected by subsequent changes in the statutes. *See* A.R.S. § 1-246; *see also State v. Stine*, 184 Ariz. 1, 3, 906 P.2d 58, 60 (App. 1995). Moreover, with one exception that does not relate to Baker, the version of the statute upon which Baker relies is essentially the same as the current version. Notably, the subsection upon which Baker appears to rely applies only to preparatory, and not completed offenses, like the ones Baker committed. *See* § 13-604.01(J) and (N). Accordingly, even if Baker's argument were not otherwise fatally flawed, he would not have been entitled to relief under the statute.

¶3 Baker also raises various sentencing arguments. Because Baker could have raised these arguments in one of his previous proceedings, he is precluded from doing so now. Rule 32.2(a)(1), (2), and (3) preclude relief for claims based upon any ground "[r]aisable on direct appeal," "[f]inally adjudicated on the merits on appeal or in any previous collateral proceeding," or "waived at trial, on appeal, or in any previous collateral

proceeding." Therefore, any sentencing argument Baker now raises is precluded, as the trial court correctly found. *Id.*

¶4 Finally, we reject Baker's claim that he was entitled to an evidentiary hearing. Because he failed to state a colorable claim entitling him to relief, the trial court properly dismissed his petition without conducting a hearing. *See* Ariz. R. Crim. P. 32.6(c). A trial court is required to conduct an evidentiary hearing only when a colorable claim has been presented, "one that, if the allegations are true, might have changed the outcome." *State v. Runningeagle*, 176 Ariz. 59, 63, 859 P.2d 169, 173 (1993).

¶5 Accordingly, although we grant the petition for review, we deny relief.

JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

JOHN PELANDER, Chief Judge

J. WILLIAM BRAMMER, JR., Judge